

Emergency Rules
of the
Tennessee Department of Environment and Conservation
Water Quality Control Board
Division of Water Pollution Control

Chapter 1200-4-3
General Water Quality Criteria

Statement of Necessity Requiring Emergency Rules

Pursuant to T.C.A. §4-5-208, the Water Quality Control Board is promulgating emergency rules covering nutrient criteria. In *City of Cookeville v. Tennessee Water Quality Control, et al.*, the court recently held that organic enrichment resulting from excessive nutrients cannot be addressed in a NPDES permit issued by the Tennessee Department of Environment and Conservation in the absence of a water quality standards rule promulgated by the Water Quality Control Board under the Uniform Administrative Procedures Act. A notice of proposed rulemaking for revised water quality standards (WQS) rules was filed with the Secretary of State on January 31, 2001. Those WQS rules include a narrative criterion for nutrients and there have been public hearings and public comments on those WQS rules. But under T.C.A. § 4-5-207, these rules, once adopted by the Board, will not be effective until 75 days after they have been filed with the Secretary of State.

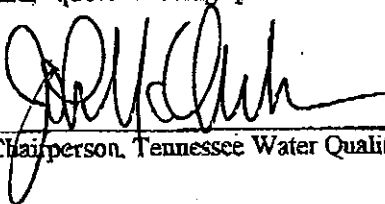
As a result of the ruling in *City of Cookeville*, we have made the finding that there is an emergency creating a danger to the public health, safety, and welfare in that there will not be an adequate regulatory basis for the control of nutrients in the waters of the state, absent an emergency rule, until after such permanent rules, which are already in process, are formally promulgated by the Water Quality Control Board. The lack of such basis would be injurious to the waters of the state held in the trust for the public, and the public welfare.

By making such finding, the Board does not waive any legal challenges as to the correctness of the recent court ruling regarding the *City of Cookeville* case, which the Department plans to appeal during the time this rule is effective.

For copies of the entire text of the proposed amendments contact:

Patrick N. Parker
401 Church Street
20th Floor, L&C Tower
Nashville, TN 37243
(615) 532-0131

Adopted and approved by a majority of the Board, quorum being present this 22nd day of July, 2003.


Chairperson, Tennessee Water Quality Control Board

Chapter 1200-4-3
General Water Quality Criteria

Rule 1200-4-3-.03 (3) is amended by adding the following language:

- (k) Nutrients – The waters shall not contain nutrients in concentrations that stimulate aquatic plant and/or algae growth to the extent that aquatic habitat is substantially reduced and/or the biological integrity fails to meet regional goals. Additionally, the quality of downstream waters shall not be detrimentally affected.

Interpretation of this provision may be made using the document Development of Regionally-based Interpretations of Tennessee's Narrative Nutrient Criterion and/or other scientifically defensible methods.

Authority: T.C.A. §§4-5-201, et seq., and 69-3-105. Administrative History: Original rule certified June 7, 1974. Amendment filed December 1, 1975; effective December 30, 1975. Amendment filed November 25, 1977; effective December 26, 1977. Amendment filed March 30, 1983; effective April 29, 1983. Amendment filed December 19, 1986; effective February 2, 1987. Amendment filed July 16, 1991; effective August 30, 1991. Amendment filed May 16, 1995; effective July 30, 1995. Amendment filed July 13, 1999; effective October 11, 1999.

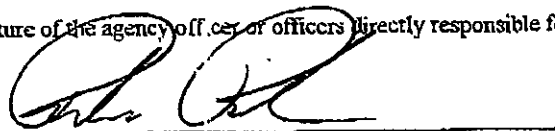
Legal Contact and/or party who will approve final copy:

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Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

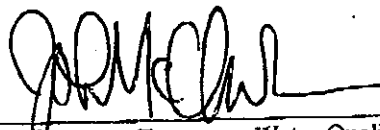


Patrick N. Parker
Staff Attorney


The roll-call vote by the Water Quality Control Board on these emergency rules was as follows:

	<u>Aye</u>	<u>No</u>	<u>Abstain</u>
Mr. John McClurcan	X	_____	_____
Dr. Robert Taylor	X	_____	_____
Dr. Don Byerly	X	_____	_____
Mr. James Haynes	X	_____	_____
Ms. Geneil Dillehay	X	_____	_____
Mr. Frank McGirtley	X	_____	_____
Mr. Eddie Wayne Floyd	X	_____	_____

I certify that this is an accurate and complete copy of emergency rules lawfully promulgated and adopted by the Water Quality Control Board on the 22nd day of July 2003.



Chairperson, Tennessee Water Quality Control Board

Subscribed and sworn to before me this the 23rd day of July, 2003.


Notary Public

My commission expires on the 27th day of March, 2004.

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Paul G. Summers
Attorney General and Reporter

The emergency rules set out herein were properly filed in the Department of State on the _____ day of _____, 200____ and will be from the date of filing for a period of _____ days. These emergency rules will remain in effect through _____ day of _____, 200____.

Riley C. Damell
Secretary of State of the State of Tennessee

By: _____